#### IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

(Attorney Docket No. 14227US01)

In the Application of:

Kevin T. Chan

Serial No.: 10/612,729

Filed: July 2, 2003

For: METHOD AND SYSTEM FOR AUTOMATIC MEDIA DEPENDENT INTERFACE RECONFIGURATION AND

REPAIR

**Examiner:** Mon Cheri S. Davenport

**Group Art Unit: 2462** 

Confirmation No.: 5781

Transmitted via the Office electronic filing

system August 5, 2010

APPLICATION FOR RECONSIDERATION OF THE DETERMINATION OF PATENT TERM ADJUSTMENT UNDER 35 U.S.C. 154(b)
ACCOMPANYING THE NOTICE OF ALLOWANCE (37 CFR § 1.705)

Commissioner for Patents P.O. Box 1450 Alexandria VA 22313-1450

Sir:

The applicant respectfully requests reconsideration of the Determination of Patent Term Adjustment Under 35 U.S.C. 154(b) (PTOL-85) accompanying the Notice of Allowance mailed May 27, 2010 ("the Decision"), to the extent indicated in the following discussion and the enclosed modified version of the USPTO Patent Term Adjustment calculation on PAIR. This application for reconsideration of the Decision is being filed after the date of mailing of the Notice of Allowance and no later than the payment of the issue fee.

This application for reconsideration of the Decision is accompanied by the fee set forth in § 1.18(e) (\$200).

This application for reconsideration of the Decision includes below a statement of the facts involved in sufficient detail to allow the United States

Patent and Trademark Office (USPTO) to reach the correct patent term adjustment respecting the disputed items.

The Applicant's calculation shows that the correct patent term adjustment should be 1619 days.

The bases under § 1.702 for the adjustment are as follows.

# **Positive Patent Term Adjustment**

# Three Year Guarantee (35 USC § 154(b)(1)(B))

The USPTO calculation of the patent term adjustment under the three-year deadline for issuing a patent after its filing date was 0 days. The Applicant disagrees with this determination because the patent term adjustment on this ground should instead be 1004 days, minus 75 days consumed by an appeal, for a net adjustment of 929 days.

Specifically, the enclosed modified version of the USPTO Patent Term Adjustment calculation on PAIR shows that:

- the actual filing date of the application was July 2, 2003,
- the third anniversary of the actual filing date was July 2, 2006,
- the first request for continued examination of the application (RCE) under 35 USC 132(b) was filed on April 1, 2009.
- the first RCE was filed 1004 days after the third anniversary of the actual filing date, which is the appropriate patent term adjustment on this ground.

The patent term adjustment under the three-year rule was reduced by an appeal.

- review by the Board or a Federal court began on the date the Notice of Appeal was filed, i.e. August 31, 2007,
- the time consumed by review by the Board or a Federal court ended on the date of (1) a Board of Patent Appeals and

Interferences decision, a Federal court decision, or a Board remand, or (2) the date prosecution was reopened, i.e. November 14, 2007,

- the time consumed by the appeal thus ended on November 14,
   2007, after an interval of 75 days.
- The patent term adjustment under the three-year rule of 1004 days, reduced by appeal time of 75 days, is thus 929 days.

# **Reductions in Patent Term Adjustment**

### Removing Overlap

- Two or more grounds of delay overlap from July 2, 2006, to February 26, 2007, totaling 239 days of delay.
- Two or more grounds of delay overlap from November 30, 2007, to January 24, 2008, totaling 55 days of delay.

This overlap has been subtracted from the patent term adjustment in the enclosed modified version of the USPTO Patent Term Adjustment calculation on PAIR.

# Three Months to Respond to Office actions (37 CFR § 1.704(b))

The applicant is contesting the following application(s) of 37 CFR § 1.704(b) to reduce the patent term adjustment in the present application.

# Period from October 25, 2008, to October 27, 2008,

- The pertinent Office action was mailed on July 25, 2008,
- The date three months after the mailing date of the Office action is Saturday, October 25, 2008,
- The response to the Office action was filed on Monday, October 27, 2008,

- The reduction in the patent term adjustment proposed by the USPTO is 2 days,
- The Applicant's position is that the present Office action response filed on the first business day after a deadline falling on a weekend or holiday is not late, establishing the correct reduction in patent term adjustment is 0 days. The basis for this position is 37 CFR § 1.6(a)(1), which states in relevant part, "The Patent and Trademark Office is not open for the filing of correspondence on any day that is a Saturday, Sunday, or Federal holiday within the District of Columbia," and 37 CFR § 1.7(a), which states in relevant part: "When the day, or the last day fixed by statute or by or under this part for taking any action or paying any fee in the United States Patent and Trademark Office falls on Saturday, Sunday, or on a Federal holiday within the District of Columbia, the action may be taken, or the fee paid, on the next succeeding business day which is not a Saturday, Sunday, or a Federal holiday." In this case, 37 CFR § 1.7(a) is applicable because the last day set by statute (35) USC § 154(b)(2)(C)(ii)) for taking the action of filing a response to an Office action without being "deemed to have failed to engage in reasonable efforts to conclude processing or examination of an application," falls on a Saturday, Sunday, or on a Federal holiday within the District of Columbia.

# **Net Patent Term Adjustment**

The changes requested by the Applicant to the USPTO patent term adjustment determination in the Decision are as follows:

# **Positive Patent Term Adjustment**

## Three Year Guarantee (35 USC § 154(b)(1)(B))

	Patent Term Adjustment (days)
USPTO Calculation	0
Applicant Calculation	929

# **Reductions in Patent Term Adjustment**

### • Removing Overlap

	Patent Term Adjustment (days)
USPTO Calculation	0
Applicant Calculation	294

## Three Months to Respond to Office actions (37 CFR § 1.704(b))

	Patent Term Adjustment (days)
USPTO Calculation	2
Applicant Calculation	0

#### Conclusion

The Applicant requests modification of the patent term adjustment as indicated above. As shown in the enclosed modified version of the USPTO Patent Term Adjustment calculation on PAIR, the patent term adjustment proposed by the Applicant is thus 1619 days.

Please charge any fees or credit any overpayment of fees presently required to McAndrews, Held & Malloy, Ltd., Deposit Account No. 13-0017.

Respectfully submitted,

McANDREWS, HELD & MALLOY, LTD.

Date: August 5, 2010

By: /Hopeton S. Walker/
Hopeton S. Walker
Reg. No. 64,808
Attorney for Applicant

McANDREWS, HELD & MALLOY, LTD. 500 West Madison Street Chicago, Illinois 60661

Telephone: (312) 775-8000

PATENT TERM ADJUSTMENT SPREADSHEET

Ser. No.	10/612,729	Docket No. 142 PTO Calculation	Docket No. 14227US01 PTO Calculation	Applicant Calculation	lculation
DATE	EVENT	PTO Delay	PTO Delay Appl. Delay	PTO Delay	Appl. Delay
Tuesday, December 07, 2010	Projected issue date			,	
Thursday, May 27, 2010	Mail Notice of Allowance	12		12.00	
Tuesday, May 25, 2010	Document Verification	4		<b>4</b>	
	Notice of Allowance Data	4		4	
Tuesday, May 25, 2010	Verification Completed				
	Case Docketed to Examiner	<b>£</b> _		4	
Tuesday, May 25, 2010	in GAU				anno vi
	Examiner's Amendment	ć=		4	III DUNIN
Monday, May 24, 2010	Communication				
Saturdav, Mav 15, 2010	Four month after Notice of Appeal				8
	Date Forwarded to	4			
Friday, March 12, 2010	Examiner			·	
	Mail Appeals conf. Reopen				
Friday, March 12, 2010	Prosec.				
	Pre-Appeals Conference	œ.		<b>(</b>	
	Decision - Reopen				
Friday, March 12, 2010	Prosecution				
	Request for Pre-Appeal	<b>4</b>		•	
Friday, January 15, 2010	Conference Filed				
Friday, January 15, 2010	Notice of Appeal Filed	₽.		€=	
	Mail Final Rejection (PTOL -				
Monday, November 23, 2009	326)	10		10,00	
Friday, November 20, 2009	Final Rejection				
	Four months after response				
rriday, Novernber 13, 2009	Lo Utillee action	4			
Tuesday, October 06, 2009	Case Docketed to Examiner in GAU	<b>É</b>		<del>[a</del>	

	Date Forwarded to	<b>4</b>	
Saturday, September 12, 2009	Examiner		
	Response after Non-Final	•	
Monday, July 13, 2009	Action		
Monday, April 13, 2009	Mail Non-Final Rejection		
Sunday, April 12, 2009	Non-Final Rejection		
	Date Forwarded to		
Friday, April 03, 2009	Examiner		
	Date Forwarded to		
Friday, April 03, 2009	Examiner		
	Disposal for a RCE / CPA /		
Friday, April 03, 2009	R129		
Wednesday, April 01, 2009	Request for Continued Examination (RCE)	1604.00	
	Workflow - Reduest for RCE		
Wednesday, April 01, 2009	- Begin		
	Mail Final Rejection (PTOL -		
Thursday, January 29, 2009	326)		
Thursday, January 29, 2009	Final Rejection		
	Date Forwarded to		
Monday, November 24, 2008	Examiner		
0000	Response after Non-Final		C
Monday, October 27, 2008	ACTOD		כ
	Three months after Office		
saturday, October 25, 2008	acuon		
	Case Docketed to Examiner		*******
Sunday, October 05, 2008	in GAU		
Friday, July 25, 2008	Mail Non-Final Rejection	4	
Monday, July 21, 2008	Non-Final Rejection		
	Date Forwarded to		
Saturday, April 26, 2008	Examiner		
0000	Response after Non-Final		
Monday, April 21, 2008	ACTION		

Thursday, January 24, 2008	Mail Non-Final Rejection   55	26
Tuesday, January 22, 2008	Non-Final Rejection	<sup>ው</sup> -55.00
	Four months after Notice of	
Monday, December 31, 2007	Appear	
	Unknown event supporting	
Friday, November 30, 2007	2008	
	Mail Appeals conf. Reopen 🌇	<b>*</b>
Wednesday, November 14, 2007	Prosec.	-75.00
	Date Forwarded to	•
Friday, November 09, 2007	Examiner	
	Pre-Appeals Conference	
	Decision - Reopen	
Thursday, November 08, 2007	Prosecution	
	Request for Pre-Appeal	***
Friday, August 31, 2007	Conference Filed	
Friday, August 31, 2007	Notice of Appeal Filed	<b>4</b> -
	Mail Advisory Action (PTOL -	<b>4</b>
Thursday, August 16, 2007	303)	
	<del>(</del>	
Wednesday, August 15, 2007	Advisory Action (PTOL-303)	
	Case Docketed to Examiner	
Wednesday, August 01, 2007	in GAU	
	Date Forwarded to	<b>*</b>
Wednesday, August 01, 2007	Examiner	
ı	Amendment after Final	
Tuesday, July 31, 2007	Rejection	
	Mail Notification of Terminal	
Thursday, May 31, 2007	Disclaimer - Accepted	
	Mail Final Rejection (PTOL -	
Thursday, May 31, 2007	326)	
Tuesday, May 29, 2007	Final Rejection	

Friday, May 04, 2007	Paralegal TD Accepted	
	Notification of Terminal	
Friday, May 04, 2007	Disclaimer - Accepted	
	Date Forwarded to	
Thursday, May 03, 2007	Examiner	
Thursday, April 26, 2007	Terminal Disclaimer Filed	
	Response after Non-Final	
Thursday, April 26, 2007	Action	
Monday, February 26, 2007	Mail Non-Final Rejection 907	907.00
Tuesday, February 20, 2007	Non-Final Rejection	*-239.00
	Case Docketed to Examiner	4
Thursday, February 08, 2007	in GAU	
	Case Docketed to Examiner	<b>4</b>
Thursday, February 08, 2007	in GAU	
	Case Docketed to Examiner	4
Monday, December 11, 2006	in GAU	
	Miscellaneous Incoming T	
Wednesday, August 16, 2006	Letter	
	Information Disclosure	<b>*</b>
Monday, August 07, 2006	Statement considered	
Monday, August 07, 2006	Reference capture on IDS	•
	Information Disclosure	<b>\$</b>
Monday, August 07, 2006	Statement (IDS) Filed	
	Information Disclosure	4
Monday, August 07, 2006	Statement (IDS) Filed	
Sunday, July 02, 2006	Three year date	
	Case Docketed to Examiner	
Saturday, December 31, 2005	in GAU	
	IFW TSS Processing by Tech	
Wednesday, October 05, 2005	Center Complete	
Thursday, September 02, 2004	14 month date	
	Information Disclosure	<b>A</b>
Monday, November 03, 2003	Statement considered	

	Information Disclosure	<b>-</b>			
Monday, November 03, 2003	Statement (IDS) Filed			***************************************	
	Information Disclosure	4		<b>(=</b>	
Monday, November 03, 2003	Statement (IDS) Filed			···	
	Application Return from	4		<b>\$</b> =	
Tuesday, September 30, 2003	OIPE				
		4		4	
Tuesday, September 30, 2003	Application Return TO OIPE				
	Application Is Now	4		d <sub>a</sub>	
Tuesday, September 30, 2003	Complete				
	Application Dispatched from	<b>-</b>		<b>(</b>	
Monday, September 29, 2003	OIPE				
Monday, September 15, 2003	Cleared by OIPE CSR	4		<b>4</b>	
	IFW Scan & PACR Auto	<b>#</b>		4	
Wednesday, July 23, 2003	Security Review			<del></del>	
Wednesday, July 02, 2003	Initial Exam Team nn	4		<b>#</b>	
		PTO	APPL	PTO	APPL
		(Days)	(Days)	(Days)	(Days) (Days)
		984	2	1619	0
PTA	<b>^</b>	982	982 Days	1619	1619 Days

10/612,729	METHOD AND SY INTERFACE REC		DMATIC MEDIA DEPEND AND REPAIR		08-05- 2010::11:10:23
Patent Term	Adjustments				
	djustment (PTA) for	Application Numb	per: 10/612,729		
Filing or 371(c		07-02-2003	USPTO Delay (PTO) De	elay (days):	-
Issue Date of	Patent:	-	Three Years:		-
Pre-Issue Petit	tions (days):	-	Applicant Delay (APPL)	Delay (days):	-
Post-Issue Pet	itions (days):	-	Total PTA (days):		982
USPTO Adjustr	ment(days):	-	Explanation Of Calculate	tions	
Patent Term	Adjustment H	story			
Date	<b>Contents Descr</b>	iption		PTO(Days)	APPL(Days)
05-27-2010	Mail Notice of Allo	owance		12	
05-25-2010	Document Verific	ation		介	
05-25-2010	Notice of Allowan	ce Data Verificatio	on Completed	介	
05-25-2010	Case Docketed to	Examiner in GAU		命	
05-24-2010	Examiner's Amen	dment Communic	ation	俞	
03-12-2010	Date Forwarded t	o Examiner		企	
03-12-2010	Mail Appeals conf	. Reopen Prosec.		金	
03-12-2010	Pre-Appeals Conf	erence Decision -	Reopen Prosecution	徻	
01-15-2010	Request for Pre-A	Appeal Conference	Filed	î	
01-15-2010	Notice of Appeal	Filed		. 1	
11-23-2009	Mail Final Rejecti	on (PTOL - 326)		10	
11-20-2009	Final Rejection			企	
10-06-2009	Case Docketed to	Examiner in GAU		Ŷ	
09-12-2009	Date Forwarded t	o Examiner		<b>a</b>	
07-13-2009	Response after N	on-Final Action		Ŷ	
04-13-2009	Mail Non-Final Re	ejection			
04-12-2009	Non-Final Rejecti	on			
04-03-2009	Date Forwarded t	o Examiner			
04-03-2009	Date Forwarded t	o Examiner			
04-01-2009	Request for Cont	nued Examination	(RCE)		
04-03-2009	Disposal for a RC	E / CPA / R129			
04-01-2009	Workflow - Reque	est for RCE - Begir	ı		
01-29-2009	Mail Final Rejecti	on (PTOL - 326)			
01-29-2009	Final Rejection				
11-24-2008	Date Forwarded t	o Examiner			
10-27-2008	Response after N	on-Final Action			2
10-05-2008	Case Docketed to	Examiner in GAU			4
07-25-2008	Mail Non-Final Re	jection			Ŷ
07-21-2008	Non-Final Rejecti	on			
04-26-2008	Date Forwarded t	o Examiner			

Response after Non-Final Action

04-21-2008

01-24-2008	Mail Non-Final Rejection	55
01-22-2008	Non-Final Rejection	r
11-09-2007	Date Forwarded to Examiner	命
11-14-2007	Mail Appeals conf. Reopen Prosec.	<b>^</b>
11-08-2007	Pre-Appeals Conference Decision - Reopen Prosecution	•
08-31-2007	Request for Pre-Appeal Conference Filed	企
08-31-2007	Notice of Appeal Filed	命
08-16-2007	Mail Advisory Action (PTOL - 303)	俞
08-15-2007	Advisory Action (PTOL-303)	介
08-01-2007	Case Docketed to Examiner in GAU	ŵ
08-01-2007	Date Forwarded to Examiner	<b>^</b>
07-31-2007	Amendment after Final Rejection	介
05-31-2007	Mail Notification of Terminal Disclaimer - Accepted	
05-31-2007	Mail Final Rejection (PTOL - 326)	
05-29-2007	Final Rejection	
05-04-2007	Paralegal TD Accepted	
05-04-2007	Notification of Terminal Disclaimer - Accepted	
04-26-2007	Terminal Disclaimer Filed	
05-03-2007	Date Forwarded to Examiner	
04-26-2007	Response after Non-Final Action	
02-26-2007	Mail Non-Final Rejection	907
02-20-2007	Non-Final Rejection	介
11-03-2003	Information Disclosure Statement considered	介
08-07-2006	Information Disclosure Statement considered	介
02-08-2007	Case Docketed to Examiner in GAU	介
02-08-2007	Case Docketed to Examiner in GAU	企
12-11-2006	Case Docketed to Examiner in GAU	介
08-07-2006	Reference capture on IDS	介
08-16-2006	Miscellaneous Incoming Letter	r
08-07-2006	Information Disclosure Statement (IDS) Filed	介
08-07-2006	Information Disclosure Statement (IDS) Filed	介
12-31-2005	Case Docketed to Examiner in GAU	介
10-05-2005	IFW TSS Processing by Tech Center Complete	命
11-03-2003	Information Disclosure Statement (IDS) Filed	命
11-03-2003	Information Disclosure Statement (IDS) Filed	•
09-30-2003	Application Return from OIPE	介
09-30-2003	Application Return TO OIPE	仓
09-29-2003	Application Dispatched from OIPE	介
09-30-2003	Application Is Now Complete	命
09-15-2003	Cleared by OIPE CSR	介
07-23-2003	IFW Scan & PACR Auto Security Review	介

07-02-2003

Initial Exam Team nn

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